

## REMARKS

In the Official Action mailed on **21 March 2007**, the Examiner reviewed claims 1-2, 4-10, and 12-16. Claims 1-2, 4-10, and 12-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Beck et al (USPub 2002/0049963, hereinafter “Beck”), in view of Almy et al (USPN 6,609,216, hereinafter “Almy”).

### Rejections under 35 U.S.C. §103(a)

Examiner contends that Applicants previous amendment does not put the instant application in condition for allowance, and thus the previous rejection is still applicable.

Independent claims 1 and 9 were rejected as being unpatentable over Beck in view of Almy. Furthermore, dependent claims 3 and 11, which depend upon independent claims 1 and 9, respectively, were rejected as being unpatentable over Beck in view of Almy.

Examiner states that Almy discloses the element of “the overhead time is determined by executing the profiling instrumentation code without executing any instrumented code.” Examiner references Almy, column 2, lines 23-49, and states where  $n=0$ , as support for this argument.

Applicant respectfully disagrees. Almy discloses executing a test program including  $n$  test points and executing the program repeatedly, each time removing one of  $n$  test points, calculating the difference in time caused by removing one of  $n$  test points, and attributing the difference in time to the test point removed. At no point does Almy disclose or suggest determining the overhead time by executing the profiling instrumentation code without executing any instrumented code. In fact, Almy teaches away from such a situation by specifically stating that “the test case program is run a preselected number of times for the initial test case sequence (test points **1 through  $n$** ),” and fails to disclose or suggest the case

where  $n=0$ , or determining the overhead of the test program. (Almy, Column 2, lines 23-30)

Nowhere in Almy, or in Beck, or in any combination therein, do they suggest, hint, or imply to determine the overhead of executing the profiling instrumentation code without executing any instrumented code. In fact, Almy suggests quite the opposite by suggesting the tedious steps of executing the test program numerous times and removing a test point each time to determine the execution time associated with each test point. In contrast, the present invention teaches “the overhead time is determined by executing the profiling instrumentation code without executing any instrumented code,” (claim 1). In fact, Almy never even suggests determining the overhead time.

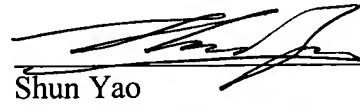
Hence, Applicant respectfully submits that independent claims 1 and 9 as presently amended are in condition for allowance. Applicant also submits that claims 2 and 4-8, which depend upon claim 1, and claims 10 and 12-16, which depend upon claim 9, are for the same reasons in condition for allowance and for reasons of the unique combinations recited in such claims.

**CONCLUSION**

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

By

  
Shun Yao  
Registration No. 59,242

Date: 03 April 2007

Shun Yao  
PARK, VAUGHAN & FLEMING LLP  
2820 Fifth Street  
Davis, CA 95618-7759  
Tel: (530) 759-1667  
Fax: (530) 759-1665  
Email: shun@parklegal.com